



**Office of the Attorney General
State of Texas**

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November 30, 1992

**Mr. David J. Freeman
Executive Secretary
Texas Racing Commission
P. O. Box 12080
Austin, Texas 78711-2080**

Letter Opinion No. 92-78

Re: Whether an individual who was unassociated with a racetrack licensee at the time the racetrack was licensed or was operating may request reinstatement of the racetrack license pursuant to section 6.19 of the Texas Racing Act, V.T.C.S. article 179e, and related questions (ID# 17168)

Dear Mr. Freeman:

You have asked us to construe section 6.19 of the Texas Racing Act, V.T.C.S. article 179e. As background to the questions you ask, you state that

[i]n 1989, the Texas Racing Commission issued a Class 2 racetrack license to Heart of Texas Racing, Inc., ("H.O.T.") for a racetrack to be operated in Brady, Texas. The racetrack opened in October 1989, and conducted a fall race meeting. In the winter of 1990, H.O.T. filed an application to renew its racetrack license, as well as a request for revised race dates for 1990. The commission conducted a hearing on the revised race dates in April, 1990, and voted to grant the request. Before an order was entered on the race dates, H.O.T. declared bankruptcy under Chapter 7 of the federal bankruptcy laws. In June, 1990, without opposition from H.O.T., the commission voted to deny the application for renewal of its Class 2 racetrack license.

In December 1991 Mr. Ferd Slocum sent [a letter] to the Texas Racing Commission requesting reinstatement of H.O.T.'s license under § 6.19 of the Act. Mr. Slocum was not an owner, officer, or director of H.O.T. at the time the Class 2 license was issued and H.O.T. had never requested Commission approval under § 6.13 of the Act for Mr. Slocum to acquire an ownership interest or to become an officer or director. After LO 92-001

was issued, I met with Mr. Slocum and expressed my concerns about whether he was authorized to request reinstatement. Since that time, the Commission staff has received several communications from Mr. Slocum and his representatives regarding the possibility of reinstating H.O.T.'s license for the benefit of Mr. Slocum and a new group of investors, none of whom were involved in the original licensee.

Section 6.19 states in pertinent part as follows:

(a) A class 2 racetrack license revoked by the commission before September 1, 1991, for the licensee's failure to demonstrate financial responsibility may be reinstated as provided by this section.

(b) A licensee to which this section applies must apply for reinstatement not later than January 1, 1992. The commission may not require the licensee to pay an application or renewal fee.

....

(d) The commission shall reinstate the license and may not revoke or suspend the license before the second anniversary of the date that it is reinstated unless it finds that:

(1) material grounds that cannot be cured, other than the licensee's inability to demonstrate financial responsibility, exist for denial, revocation, or suspension of the license;

(2) the licensee is or has been the subject of a voluntary or involuntary proceeding under the Bankruptcy Code (Title 11 U.S.C.); or

(3) another person has obtained a racetrack license for the racetrack facility for which the licensee obtained the license.

(e) A license reinstated under this section expires on the second anniversary of the date that it is reinstated.

You ask two questions about section 6.19. First, you ask whether an individual who was unassociated with a racetrack licensee at the time the racetrack was licensed or

was operating may request reinstatement of the racetrack license under section 6.19 of the Texas Racing Act. Second, you ask whether a racetrack licensee that was the subject of a voluntary bankruptcy proceeding is eligible to have its license reinstated. If we conclude that such a licensee is eligible to have its license reinstated, you ask whether the Texas Racing Commission may revoke the reinstated license on the basis of the bankruptcy proceeding.

Your questions serve as a follow-up to Letter Opinion 92-001 (1992), in which we also construed section 6.19. In that opinion, we interpreted the phrase "revoked by the commission," as used in subsection (a), to encompass that class of licensees whose licenses the commission in fact revoked and those licensees whose licenses the commission constructively revoked, *i.e.*, any person who, because he or she was unable to demonstrate financial responsibility, surrendered his or her license prior to September 1, 1991, or whose license expired because he or she withdrew the application for renewal, or whose license the commission refused to renew. Letter Opinion 92-001 (1992) at 3. We expressly limited our answer to the facts before us.

Letter Opinion 92-001 also stated that the commission is not authorized to investigate the background of new owners of a racetrack brought in as a result of new financing and to deny reinstatement of the license based on grounds for denial listed in section 6.06 of the Texas Racing Act.¹ Underlying this statement is the principle that a corporation is distinct from the persons who own it. 15 TEX. JUR. 3d *Corporations* § 10, at 145 (1981) (and cases cited therein). You have stated that the corporation, H.O.T., is the licensee. Mr. Slocum and the new group of investors are the new owners of the licensee, and, on behalf of H.O.T., Mr. Slocum is requesting that the commission reinstate H.O.T.'s racetrack license. Because the licensee apparently has complied with the conditions stated in subsections (a) and (b), section 6.19 requires the commission to reinstate H.O.T.'s license.

¹Section 6.06(a) of the Texas Racing Act, V.T.C.S. article 179e, authorizes the Texas Racing Commission to refuse to issue or renew a racetrack license, or to revoke or suspend a license, if, after notice and hearing, the commission finds that the applicant or licensee has committed any one of several actions, including conviction of a felony or any crime involving moral turpitude, violation of the Texas Racing Act, or failure to correctly answer a question in the application. Section 6.06(a) also authorizes the commission to refuse to issue or renew a racetrack license, or to revoke or suspend a license if, after notice and hearing, the commission finds that the applicant or licensee has any one of several qualities, including that the applicant is not of good moral character, the applicant is not old enough to purchase alcoholic beverages in this state, or the applicant has not been a United States citizen for ten consecutive years immediately preceding the time the applicant files the application.

To answer your second question, we must construe section 6.19(d)(2), which authorizes the commission to revoke or suspend a reinstated license before the second anniversary of the date that the commission reinstated the license if the commission finds that the licensee is or has been the subject of a voluntary or involuntary bankruptcy proceeding instituted pursuant to title 11 of the United States Code. In the factual background you provided, the licensee, H.O.T., has been the subject of a voluntary bankruptcy proceeding. Thus, pursuant to section 6.19(d)(2), the commission may revoke or suspend H.O.T.'s license before the second anniversary of the date that the commission reinstates it.²

S U M M A R Y

Provided that a corporation holds the racetrack license, a new owner of the corporation may request reinstatement of a racetrack license under section 6.19 of the Texas Racing Act, V.T.C.S. article 179e, even though the individual was unassociated with the corporation at the time the Texas Racing Commission issued the original license or at any time during the time the racetrack was operational. If all of the conditions specified in section 6.19(a) and (b) are met, the Texas Racing Commission must reinstate the license in that situation; however, pursuant to subsection (d)(2), the commission may revoke or suspend the racetrack's license before the second anniversary of the date that it is reinstated if the commission finds that the licensed corporation has been the subject of a voluntary proceeding under the Bankruptcy Code, title 11 of the United States Code.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

²We do not address whether section 6.19(d)(2) authorizes the commission to revoke or suspend a license in contravention of a federal bankruptcy court order.